

REMARKS

Claims 1-34 are pending in the present application. In the Office Action mailed May 16, 2006, the Examiner rejected claims 1-34 under 35 U.S.C. §103(a) as being unpatentable over Hershey et al. (USP 6,175,934) in view of Wetzer et al. (USP 6,738,748).

Hershey et al. was previously presented by the Examiner in the Office Action mailed December 14, 2004. In a timely response mailed February 14, 2005, Applicant requested withdrawal of the rejection based on commonly owned references. Applicant referred the Examiner to MPEP §§ 706.02(c) and 715.01(b), “[for] applications filed on or after November 29, 1999, this rejection under 103(a) might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.” MPEP § 706.02(k). Applicant requests that the rejection be withdrawn because Hershey et al. is not proper prior art under §103(a) since the reference is assigned to General Electric Company, as is the current application.

Wetzer was previously presented in the Office Action mailed May 17, 2005. In a timely response mailed July 18, 2005, Applicant requested withdrawal of the rejection based on the belief that Wetzer is not available as prior art pursuant to MPEP §715. Applicant subsequently submitted an antedating declaration together with a supporting exhibit disqualifying Wetzer as prior art against claims 1-34. In the Office Action dated February 2, 2006, the Examiner contended that Applicant’s Declaration under 38 CFR §1.131 “is ineffective to overcome the Wetzer reference.” The Examiner’s sole reliance for this alleged ineffectiveness was that “Exhibit A does not have an actual date for the Examiner to verify that this document was actually reduced to practice before April 3, 2001 which is the filing date of the Wetzer reference.”

Applicant again refers the Examiner to MPEP §715.07 II, which states “if the applicant or patent owner does not desire to disclose his or her actual dates, he or she may merely allege that the acts referred to occurred prior to a specified date.” Paragraphs 3, 4, and 5 of the Declaration contain the requisite recitation of dates.

Because Hershey is a commonly owned reference and Wetzer is not available as prior art pursuant to MPEP §715, both references presented by the Examiner in the Office Action mailed May 16, 2006 are disqualified. Accordingly, Applicant requests withdrawal of the rejection of claims 1-34 under §103(a). As such, no basis of rejection remains.

Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests timely issuance of a Notice of Allowance for claims 1-34.

Applicant appreciates the Examiner's consideration of these Amendments and Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,

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